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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/656,523 | 09/05/2003 | Richard James McDermott | 21990-RA | 8049 |

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| EXAMINER |
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DONNELLY, JEROME W

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| ART UNIT | PAPER NUMBER |
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3764

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| MAIL DATE | DELIVERY MODE |
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04/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/656,523

Applicant(s)

MCDERMOTT ET AL.

Examiner

Jerome W. Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) ____ is/are rejected 1-38 and 40.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

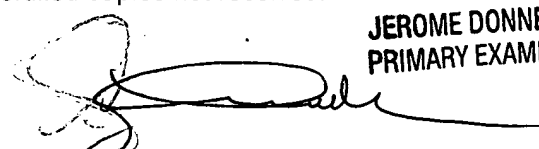
- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY
PRIMARY EXAMINER



Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- ☐ Notice of Informal Patent Application
- ☐ Other: ____

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In response to applicants remarks directed to claims 1, 9 and 14 and the application of Wiley as a 35 U.S.C. 102(b) rejected the examiner reminds the applicant.

The examiner reminds the applicant that the pre-amble is not part of the claimed invention. The only item claimed in claim 1 is a segmented wall. The pre-amble fails to breath into the body of the claims.

In regard to applicant arguments directed to segmental note the word "segmental" in col. 1, line 44 of Wiley.

In response to claims 1, 9 and 14 the applicant is also reminded that applicant is not claiming that the retaining wall of Wiley is corrugated. The applicant is only claiming that the wall is segmented, bottomless and flush. Any arguments directed to the retaining wall, being corrugated of the claims have not been considered.

As to the device of Wiley including a bottomless was Wiley discloses a wall which has an open bottom said wall supporting a liner.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley.

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The above claims are rejected for the same reason as set forth in the Office Action of 10/12/06.

In response to applicants arguments directed towards claims 16, 17, 22, 27, 28 and 40. The applicant is reminded that an "in-ground trampoline for use above ground" is not being claimed. The pre-amble is not considered to breathe life into the body of the claims.

The applicant is also reminded that ground level has not been defined.

The applicant is reminded that an arbitrary recessed area has not been defined. These claims are considered to be very broad.

In response to Woolley disclosing a bottom, the examiner, response that Woolley does not disclose a bottom. Woolley discloses an edge. If Woolley wanted to disclose a bottom he would have said so. The drawing also discloses an edge only.

In response to applicant remarks directed toward claim 28 and the "term" "adapted" the examiner is considering the term adapted as being broad in scope the examiner is not ignoring the claim limitation. The examiner is considering the device of Woolley as being capable and adapted to receive any retaining wall that is sized and a similar shaped and sized trampoline. A sized and shaped trampoline has not been claimed. A specific ground level/altitude has not been claimed.

As to applicants claimed limited of a recessed area. The examiner content that a

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recessed area is extremely broad in scope and the term "a recessed area is clear not part of the invention. If a recessed area was considered as part of the invention the claim would clearly be so broad, so as to read on any non-flat surface including the ground. A non-flat surface could be a hole, ditch or any uneven surface.

Claims 16, 17, 22, 27, 28 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Woolley.

The above claims are rejected for the same reasons as set forth in the rejection of the same claims dated 01/12/06.

In response to the applicant remarks directed to claims 1, 4-13, 17, 18, 21, 23, 26 and 29 the examiner reminds the applicant that Gordon et al does disclose the device comprising a bottomless wall in the form of a brick wall. (See fig. 2)

Gordon discloses a rigid wall in the form of segmented bricks, a support ring springs, said wall being positioned in a hole adapted to receive said trampoline and safety nets fig. 2 clearly shows each of the claimed elements of the above claims.

Claims 1, 4-13, 17, 18, 21, 23, 24, 26 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon.

The above claims are rejected for the same reasons as set forth in the same claims above, dated 01/12/06.

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In response to applicants remarks directed towards claims 1, 15, 17 and 30 as being anticipated by Jewel et al, the examiner responds as follows:

As broadly claimed, a wall can and will be interpreted by the examiner as the framework of Jewel et al. The applicant's claims have not precluded the elements of Jewel et al as being interpreted as a wall. Element 24 is padding.

Claims 1, 15, 17 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Jewel et al.

The above claims are rejected for the same reasons as set forth in the rejection of the same claims dated 01/12/06.

In response to applicant remarks directed to whether or not there is motivation shown in the prior art of Woolley and or Wiley the examiner responds as follows. Note that Wiley and Woolley both teach supporting wall. The device of Wiley teaching manufacturing walls of segments (see col. 1 line 44). Manufacturing wall member of segments is not considered to be patentable in the art.

Claims 1-3 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolley in view of Wiley.

Claims 1-3 and 17 are rejected for the same reason as set forth in the rejection of the same claims in the office action dated 01/12/06.

Claims 31, 34 and 36 are non-elected.

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In response to applicant remarks directed toward the required restriction requirement between an apparatus and method.

The requirement between the apparatus and method is considered a proper given that the apparatus of a trampoline is not required to perform the method of claim 31. Nowhere is a trampoline claimed in the claims. To position a wall in a hole would physically amount to a holding tank, for holding liquid or even holding solids.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

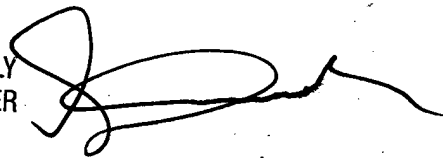
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571)272-4975.

Jerome Donnelly

JEROME DONNELLY
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be 'Jerome Donnelly', written over the printed name and title.